SALMON CREEK ASSOCIATION

IBLA 98-491 Decided February 3, 2000

Appeal from a decision of the Oregon State Office, Bureau of Land Management, rejecting mineral patent application OR-49148.

Affirmed.

1. Applications and Entries: Filing--Mining Claims: Patent

The execution of an application for patent to a mining claim by an authorized representative, at a time when the applicants are physically within the land district in which the mining claim is located and the applicants have no legal incapacity, is unauthorized and the application is invalid.

APPEARANCES: Jasper H. Coombes, Richland, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE TERRY

The Salmon Creek Association (Appellant) 1/ through its agent Jasper H. Coombes, has appealed the August 31, 1998, decision of the Oregon State Office, Bureau of Land Management (BLM), rejecting its mineral patent application OR-49148. The decision rejected the application because it was not signed by all of the applicants.

Mineral patent application OR-49148 embracing two contiguous placer mining claims in Baker County, Oregon, the Salmon Creek Association One and Two (ORMC 144523 and ORMC 145088), was filed with the Oregon State Office on November 20, 1992. Salmon Creek Association One contains approximately 142 acres within sec. 8, T. 9 S., R. 39 E., Willamette Meridian. Salmon Creek Association Two contains approximately 120 acres

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1/ The Notice of Intention to Apply for Mineral Patent identified the owners of the Salmon Creek Association as Donald E. Coombes, Jasper H. Coombes, Jean L. Coombes, Benjamin E. Coombes, Doris J. Coombes, Jabudah L. Grossmiller, Allen Grossmiller, and Maude P. Coombes.

within secs. 7 and 18, T. 9 S., R. 39 E., Willamette Meridian. Approximately 31.39 acres are located on BLM public land in the Vale District and approximately 230.45 acres are on U.S. Forest Service land in the Whitman National Forest. The application was filed by the Salmon Creek Association, by Jasper H. Coombes, co-locator and agent (Attorney in Fact) of the Association. A certified copy of a power of attorney granting Jasper Coombes full authority to conduct all business in regard to the two claims, including the patent application, was attached.

On September 13, 1994, BLM transmitted the first half final certificate (FHFC) for ultimate Secretarial review, through the Office of the Northwest Regional Solicitor. On October 5, 1994, the Office of the Northwest Regional Solicitor transmitted the patent application to the Washington Office for review, prior to transmittal to the Secretary of the Interior for signature of the FHFC.

On October 4, 1994, the BLM Washington Office issued Instruction Memorandum (IM) 95-01, with an effective date of October 1, 1994. The IM informed BLM state directors that, due to the passage of the Interior and Related Agencies Appropriations Act, Pub. L. No. 103-332, 108 Stat. 2499, mineral patent applications would be subject to a processing moratorium on the processing of mineral patents unless an FHFC was signed before October 1, 1994, or the FHFC was pending in Washington, D.C. as of September 30, 1994.

Application OR-49148 was returned to the Oregon State Office as being subject to the moratorium. No further action was taken on the application until the BLM Washington Office issued IM 97-165, dated August 25, 1997. This IM was based on the Tenth Circuit Court of Appeals decision in Mt. Emmons Mining Co. v. Babbitt, 117 F.3d 1167 (1997), which instructed BLM to continue the processing of mineral patent applications where the purchase price had been paid on or before the September 30, 1994, deadline. IM 97-165 identified application OR-49148 as one to which the Court of Appeals' decision applied and ordered the state office to process the application.

Upon further review of the application, the BLM state office determined that the mineral patent application was signed only by Jasper H. Coombes as the Authorized Representative. On July 22, 1998, the state office issued a decision, stating that it was holding the application for rejection and requiring that the co-owners who had not signed the application furnish affidavits indicating they were not present in the land district or were legally incapacitated at the time the patent application was executed. Subsequently the seven co-owners who had not signed the application submitted identical notarized statements titled "Certification of Incapacity." 2/

2/ The statements of Maude Coombes, Jabudah Grossmiller, and "Alan" Grossmiller were dated Aug. 11, 1998. The statements of Benjamin Coombes and Doris Coombes were dated Aug. 17, 1998, and that of Jean Coombes was dated Aug. 19, 1998. Donald Coombes's statement was dated Oct. 11, 1998.

In its August 31, 1998, decision, BLM explained that an application for patent had to be signed by all applicants except where the applicants were not within the land district at the time of execution of the application or were legally incapacitated. BLM found that the notarized statements provided by the applicants who had not signed the patent application did not meet the requirement for legal incapacity. Therefore, BLM concluded that, even though Jasper Coombes had a power of attorney from the other applicants, the use of that power to sign the patent application was unauthorized and the application invalid.

While the decision did not reference the statute, it was based on language in section 6 of the Act of May 10, 1872, 30 U.S.C. § 29 (1994), as amended by the Act of January 22, 1880. The first sentence of 30 U.S.C. § 29 reads:

> A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim * * *, having claimed and located a piece of land for such purposes, * * *, may file in the proper land office an application for a patent, under oath, showing such compliance * * *.

The 1880 Act added the following sentence to 30 U.S.C. § 29:

> Where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits.

(Emphasis added.)

Jasper H. Coombes signed the mineral patent application as the Authorized Representative of the Salmon Creek Association and submitted a copy of a power of attorney signed by the other Association members on September 9, 1992, authorizing him to conduct all actions necessary to patent the claims. However, such power of attorney is valid only if the parties granting the authority were not present within the land district or were legally incapacitated at the time of execution of the patent application. 30 U.S.C. § 29 (1994); Floyd R. Bleak, 26 IBLA 378, 380 (1976); F.E. Robbins, 42 L.D. 481, 484 (1913); C.C. Drescher, 41 L.D. 614, 615 (1913); Rico Lode, 8 L.D. 223 (1889).

That is clearly not the situation here. All of the nonsigning applicants submitted notarized statements but none asserts that either of the exceptions applied. Each merely states that the individual had become incapable of personally signing the mining claim patent application. It is clear from the case record that the applicants are elderly individuals

who do not live within the same community, thus making it difficult to get all of their signatures on a document. Unfortunately, the law does not recognize difficulty or physical infirmity as a legal incapacity. C.C. Drescher, supra. Thus, BLM's decision rejecting the patent application because all of the applicants failed to sign must be affirmed. 3/

Appellant asserts that the reason only Jasper H. Coombes signed the application was because BLM suggested the use of a power of attorney. Essentially Appellant is asserting estoppel.

We have adopted the rule of numerous courts that estoppel is an extraordinary remedy, especially as it relates to the public lands. Harold E. Woods, 61 IBLA 359, 361 (1982). Estoppel against the Government in matters concerning the public lands must be based on affirmative misconduct, such as misrepresentation or concealment of material facts. United States v. Ruby Co., 588 F.2d 697, 703-704 (9th Cir. 1978); D.F. Colson, 63 IBLA 221, 224 (1982); Arpee Jones, 61 IBLA 149, 151 (1982). Moreover, we have expressly held that oral statements by BLM are insufficient to support a claim of estoppel and that the erroneous advice must be in the form of a crucial misstatement in an official decision. Martin Faley, 116 IBLA 398, 402 (1990), and cases cited therein. Appellant has not provided any written statement from BLM that suggested the use of power of attorney in signing the application.

In any event, all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Arlin D. Walkup, 137 IBLA 259, 260 (1996); Lester W. Pullen, 131 IBLA 271, 273 (1994). Thus, Appellant cannot claim that his reliance on oral statements of BLM should substitute for this knowledge.

Even if Appellant was misled by BLM, "a representation by a Government employee that a rule of law is other than it actually is cannot change the force and effect of that rule," or bind the Department. Charles House, 33 IBLA 308, 310 (1978). "The incorrect or unauthorized acts of government employees may not override valid rules." Id., citing inter alia, Atlantic Richfield Co. v. Hickel, 432 F.2d 587, 591 (10th Cir. 1970). "Reliance on erroneous advice cannot estop the United States or confer on an applicant any right not authorized by law." Darlene Y. Haymes, 49 IBLA 243, 246 (1980), citing Northwest Citizens for Wilderness Mining Co., 33 IBLA 317 (1978); Charles House, 33 IBLA at 310; 43 C.F.R. § 1810.3(b) and (c).

3/ Appellant maintains that original signatures on the application would have taken the same effort as obtaining them for the power of attorney authorization. While that statement is undoubtedly true, it does not alter the fact that the patent application was not signed by all of the applicants.

Appellant also points out that BLM had the application 20 months and conducted a full review, and that BLM and the Office of the Regional Solicitor originally approved the application with the authorized representative's signature. It was only after the application was revived by the decision of the 10th Circuit that the signature flaw was discovered, and Appellant notes that it was then too late to correct the problem. While that is clearly true, it is of no avail to appellant. "The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by the acquiescence of its officers or their laches, neglect of duty, failure to act, or delays in the performance of their duties." 43 C.F.R. § 1810.3(a); see also Ametex Corp., 121 IBLA 291, 294 (1991); Joseph A. Barnes, 78 IBLA 46, 60, 90 I.D. 550, 558 (1983), aff'd, 819 F.2d 250 (1987) cert denied, 484 U.S. 1005 (1988). Thus, while the delay in the discovery of the flaw in the patent application is regrettable, it provides no basis for reversal of BLM's decision.

Finally, we must hold that the failure of all applicants to sign the application is a fatal error, as it is jurisdictional and cannot be cured by amending the application. The filing requirement is statutory. 30 U.S.C. § 29 (1994). Because there is no authority for filing the application by an agent, the application is invalid. Floyd R. Bleak, supra; see Crosby and Other Lode Claims, 35 L.D. 434, 436 (1907). 4/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

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James P. Terry
Administrative Judge

I concur:

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Lisa Hemmer
Administrative Judge

4/ If Congress ends the moratorium, Appellant may file a new patent application at that time.